

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of CHRISTINE MOORE and U.S. POSTAL SERVICE,  
POST OFFICE, Columbus, OH

*Docket No. 00-784; Submitted on the Record;  
Issued March 12, 2001*

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DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,  
PRISCILLA ANNE SCHWAB

The issue is whether appellant has met her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Appellant, a 42-year-old custodian, filed a notice of occupational disease on September 13, 1999 alleging that she experienced retaliation after filing a workers' compensation claim for her January 1, 1998 employment injury. She stated that Supervisor Smiley Wilbon required her to work outside of her restrictions, followed her and made repeated remarks regarding her job performance. The Office of Workers' Compensation Programs requested additional information on October 6, 1999. By decision dated November 10, 1999, the Office denied appellant's claim, finding that she failed to substantiate a compensable factor of employment.<sup>1</sup>

The Board finds that appellant has failed to meet her burden of proof in establishing that she developed an emotional condition due to factors of her federal employment.

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.<sup>2</sup>

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<sup>1</sup> Following the Office's November 10, 1999 decision, appellant submitted additional new evidence. As the Office did not consider this evidence in reaching a final decision, the Board will not consider it for the first time on appeal. 20 C.F.R. § 501.2(c).

<sup>2</sup> *Lillian Cutler*, 28 ECAB 125, 129-31 (1976).

Appellant alleged that she was required to work outside of her restrictions. If substantiated, this allegation would constitute a compensable factor of employment. However, appellant has submitted no factual evidence in support of her allegation. Therefore, she has not established that she was required to work outside her limited-duty restrictions.

In a statement dated October 14, 1999, appellant alleged that on January 24, 1999 her assignment was changed from cleaning offices to restrooms. She stated that Mr. Wilbon complained about the condition of the bottom nuts and bolts of the toilets. Appellant stated that she could not bend and stoop due to her work injury. She alleged that Mr. Wilbon stated that he would provide a chair for appellant to use while cleaning the bottom of the toilets. Appellant repeated these remarks to Vivian Farmer and alleged that Mr. Wilbon laughed. She returned to work on March 1, 1999 after receiving medical treatment. She filed an Equal Employment Opportunity (EEO) complaint regarding the January 24, 1999 incident.

Mr. Wilbon, appellant's supervisor, completed a statement on January 27, 1999. He noted that he discussed cleanliness of the outside of the toilets with appellant on January 24, 1999 and that appellant stated that she could not bend. Mr. Wilbon asked if appellant could sit in a chair and she replied that she would have to reach, which was outside of her restrictions. He then stated that someone else could address this issue.

In a statement dated April 5, 1999, Michael Hall stated that he observed Mr. Wilbon following appellant and watching her while she cleaned the restrooms. Mr. Hall informed appellant and Mr. Wilbon left in another direction.

Appellant stated on March 21, 1999 Mr. Wilbon denied her request for annual leave on March 22, 1999. She requested aid from the union and received four hours of leave to take her husband to the airport. Appellant stated that she was denied leave under the Family Medical Leave Act when her mother was hospitalized. She alleged that Mr. Wilbon refused to sign her leave requests.

Appellant stated on September 28, 1999 her time card was missing. John Hughes instructed her to discuss the situation with Mr. Wilbon. She chose to discuss this with Postmaster Lusco.

The Board finds that appellant's allegations regarding improperly assigned duties, wrongly denied leave and unreasonable monitoring of activities at work relate to administrative or personnel matters, are unrelated to the employee's regular or specially assigned work duties and do not fall within the coverage of the Federal Employees' Compensation Act.<sup>3</sup> As a general rule, an employee's emotional reaction to an administrative or personnel matter is not covered under the Act. But error or abuse by the employing establishment in what would otherwise be an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in the administration of a personnel matter, may afford coverage. In determining whether the employing establishment erred or acted abusively, the Board has examined whether

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<sup>3</sup> 5 U.S.C. §§ 8101-8193. See *Janet I. Jones*, 47 ECAB 345, 347 (1996); *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph D. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

the employing establishment acted reasonably.<sup>4</sup> In this case, there is no evidence that Mr. Wilbon acted unreasonably in denying leave requests, monitoring appellant's activities or assigning duties.

Appellant stated that she was denied the opportunity to serve as group leader. On April 9, 1999 she filed an EEO complaint alleging that on the weekends she was the senior person and was denied the opportunity to function as group leader, which would entitle her to greater pay. The Board has previously held that denials by an employing establishment of a request for a different job, promotion or transfer are not compensable factors of employment under the Act, as they do not involve appellant's ability to perform her regular or specially assigned work duties, but rather constitute appellant's desire to work in a different position.<sup>5</sup> Thus, appellant has not established a compensable employment factor under the Act in this respect.

Appellant alleged that she was harassed and treated differently from other workers. On August 20, 1999 she filed a grievance against Mr. Wilbon. Appellant alleged that he was discussing her work performance. She alleged that Mr. Wilbon instructed her to report to Ralph Dickerson whenever she sat in accordance with her work restrictions. Appellant submitted a witness statement dated August 28, 1999 from Kelly George asserting that Mr. Wilbon requested that the witness provide appellant with a radio. She completed a statement on August 21, 1999 alleging that Mr. Wilbon discriminated against her by requiring her to carry a radio and to inform Mr. Dickerson when she sat down.

Appellant stated that two other employees were also sitting and that these employees were not required to carry a radio. She stated that coworkers discussed the need for a radio and that Mr. Wilbon watched her. Appellant alleged that coworker Randy Biswick was not required to carry a radio or report when he sat down. On August 23, 1999 appellant filed an EEO complaint noting the events of August 20, 1999 when she was resting her back by sitting and was assigned a radio.

For harassment or discrimination to give rise to a compensable disability under the Act, there must be evidence that harassment or discrimination did, in fact, occur. Mere perceptions of harassment or discrimination are not compensable under the Act. Unsubstantiated allegations of harassment or discrimination are not determinative of whether such harassment or discrimination occurred. To establish entitlement to benefits, a claimant must establish a factual basis for the claim by supporting his or her allegations with probative and reliable evidence.<sup>6</sup>

In this case, appellant has alleged that she was treated differently due to the requirement that she report when she sat to rest and that she carry a radio. She has submitted no evidence to support her allegations that other employees were allowed to sit without question and has offered

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<sup>4</sup> *Martha L. Watson*, 46 ECAB 407 (1995).

<sup>5</sup> *Donald W. Bottles*, 40 ECAB 349, 353 (1988).

<sup>6</sup> *Alice M. Washington*, 46 ECAB 382 (1994).

no proof that she was singled out to carry a radio for a negative reason. The Board finds that appellant has not established harassment or discrimination.

As appellant has failed to submit the necessary factual evidence to establish that she sustained an emotional condition due to a compensable factor of her federal employment, she has failed to meet her burden of proof and the Office properly denied her claim.

The November 10, 1999 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC  
March 12, 2001

Michael J. Walsh  
Chairman

Michael E. Groom  
Alternate Member

Priscilla Anne Schwab  
Alternate Member